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Letter dated 31 January 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 August 2002 (S/2002/911).

The Counter-Terrorism Committee has received the attached supplementary report from Armenia, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 24 January 2003 from the Permanent Representative of Armenia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Upon instructions from my Government, I have the honour to transmit to you the second report to be submitted by Armenia pursuant to paragraph 6 of the Security Council resolution 1373 (2001) (see enclosure).

The Government of Armenia stands ready to provide the Committee with any further information it may consider necessary.

(*Signed*) Movses **Abelian**
Ambassador
Permanent Representative

Enclosure

Additional information provided by Armenia pursuant to paragraph 6 of Security Council resolution 1373 (2001) in response to the questionnaire prepared by the Counter-Terrorism Committee

Sub-paragraphs 1 (a), (b), (c)

- **Please describe in more detail the new improved mechanisms that have been developed for bank reporting and exchange of information between the Central bank and the commercial banks operating in Armenia, as referred to in the report.**
- **Are there legal obligations for the financial institutions, other intermediaries (e.g. lawyers, notaries) and any other natural or legal persons to report suspicious transactions to a competent authority? What penalties apply to non-compliance with the obligation?**
- **Do the instructions of the Central Bank have the force of law? Do penalties apply if financial institutions do not comply with those instructions?**
- **Please outline Article 926 of the Civil Code relating to the freezing of funds. Please explain if Article 44 of the Constitution, as mentioned in the report, implies a restriction in regard to compliance with the Resolution.**
- **Is it possible to freeze funds and other financial assets held in Armenia belonging to non-resident persons and entities supporting terrorism abroad, on request of another country?**
- **Please outline article 40 of the Law on banks and Banking and explain how this provision contributes to compliance with this sub-paragraph**

Amendments to the *Law on Banks and Banking* adopted at the end of 2001 and the new *Law on Credit Institutions*, adopted in 2002, grant the Central Bank an authority to exert measures to prevent the use and transfer of illegal assets or the financing of terrorism. The Bank is entitled to define the specific ways of the functioning of the banks and credit institutions, and a special reporting procedure. The Central Bank is also entitled to request the bank, the credit institution or the clients thereof to submit a statement on the origins of the assets, or an instrument to proof its legality.

The Central Bank has proposed for the approval of the Ministry of Justice the protocol on *"Prevention of the Transaction of Illegal Assets and of the Financing of Terrorism,"* the reporting form for the *"Suspicious Activities,"* and the new *"Guidelines for Opening a Bank Account"* to be used at all banks. Under the proposed procedure, the banks' policy should be aimed at curbing the deposit and transactions of the illegal assets. The rules of the procedures of each bank should reflect its policy aimed at the prevention of illegal transactions and financing of terrorism.
Banks should report a suspicious transaction to the Central Bank within one working day. Failure to report such transaction is liable to penalty under the *"Law on Banks and Banking."*
The banks should be under obligation to restrict the use of assets belonging to clients whose names appear on the list of persons who finance terrorism.

However, the Ministry of Justice has denied the registration of the proposed instruments, motivating that the Central Bank does not have the authority to freeze the accounts of persons included in the lists of suspects. Based on this decision of the Ministry, the Central Bank shall propose amendments to the "Law on Banks and Banking," which would grant the Bank the authority to exercise such powers.

Additionally, the Central Bank is currently drafting a *"Law on the System of Payments"* which shall regulate the functioning and monitoring procedures of financial institutions.

The activities of lawyers and notary publics are regulated respectively through the *Law on Activities of Advocates* and *Law on Notary Public*. Lawyers and notaries do not have legal obligation to report suspicious transaction to competent authorities.

Under Article 52 of the *Law on Notary Public*, the notaries are entitled to deny services only on the basis of relevant grounds, which include, among others, unlawful actions. The notaries, however, are under no obligation to examine the conformity of the document submitted for ratification with the legislation.

Article 926 "Limitation of Disposition of the Account" of the Civil Code states, that 'Limitation of the rights of the client to dispose of the monetary funds on the account is not allowed, with the exception of cases of seizure of the monetary funds on the account or stoppage of operation of an account in cases provided by a statute.'

Article 44 of the Constitution states that "The fundamental human and civil rights and freedoms established under Articles 23, 24, 25, 26, 27 of the Constitution may only be restricted by law, if necessary for the protection of state and public security, public order, public health and morality, and the rights, freedoms, honor and reputation of others."

Sub-paragraph 2 (a)

- **Please outline Article 72 of the Criminal Code relating to the creation of armed groups. It would be useful if Armenia could provide examples of any action taken or any convictions obtained in this regard.**
- **What legal provisions or other measures exist to prevent recruitment in Armenia to terrorist groups operating outside Armenia?**
- **Please provide a progress report on the draft on tighter export and import control. Does this law include controls related to weapons and explosives? Please outline any relevant provisions of the law in this regard.**
- **Please outline Article 232 of the Criminal Code on weapons and the particular provisions of the Law on Arms that deal with manufacture, sale, possession, acquisition, registry, issuance of license, certification, transport, and storage of weapons and explosives.**
- **Please elaborate on the joint plan of action on prevention of trafficking in arms, armaments, explosives, and to combat terrorism.**

Article 72 of the *Criminal Code*[1] establishes legal liability for acts of banditry: "creation of armed groups aimed at the assault of state or non-governmental enterprises, institutions, organizations or individuals, as well as participation in such groups and their activities shall be subject to a prison sentence for the term of three to fifteen years, with the confiscation of property and an exile for two to five years, or without an exile, or to death penalty[2] with the confiscation of property.'

The *Law on Arms* specifies the types of small arms prohibited for the use as a means of civil or military defense. The Law also prohibits the 'transportation of arms, storage and possession of long-barrel fire-arms and side-arms as means of personal protection, the sale, transfer and acquisition of arms and cartridges manufactured for export only, in accordance with the requirements of the importing country.'

[1] Please note that all references are made to the Criminal Code of 1961. The new draft Criminal Code is now before the National Assembly, which in 2002 passed the General Provisions of the Code (General Principles of the criminal law) and considered the Specific Provisions (Provisions defining criminal offences of the new criminal code). The new Code of Criminal Proceedings has been in force since 1999.

[2] A de-facto moratorium on death penalty has been in force since 1992, and death penalty is abolished from the draft Criminal Code. The Constitution states that 'until such time as it is abolished, the death penalty may be prescribed for particularly grave crimes as an exceptional punishment.

Any manufacture, sale, acquisition or collection of arms should be licensed, except for the state organizations, which have legal right to arm its officers.

Cross border circulation of arms, armaments and explosives is subject to issuance of special license and is subject to special procedure. The border control over the transfer of arms is carried out by the border troops and the customs service.

The *Customs Code* provides criminal charges for illegal transfer of large cargo, cultural and other valuables, including arms, armaments, narcotics, poisonous and radioactive substances, explosives or explosive instruments across the border or forgery of customs documents. Relevant criminal charges for the smuggling are provided for by the *Criminal Code* and prescribe prison sentence for up to eight years and confiscation of property.

Illegal procurement of fire-arms, munitions or explosives is subject to prison sentence of up to eight years, or, if committed repeatedly or by a group of persons or a duty officer entitled to carry arms, to prison sentence for up to 10 years.

Sub-paragraph 2 (b)

- **Please describe the mechanisms for inter-agency coordination between the authorities responsible for narcotics, financial tracking and security, in particular with regard to border control to prevent the movement of terrorist groups.**
- **Please describe any existing measures taken or proposed to strengthen the security and control of aircraft, airports, and maritime navigation to prevent it from the movement of terrorists into, or out of the country.**

The Ministries of Security, Interior and Defense have developed a plan of actions aimed at the consolidation of the security on aircraft, at airports and vessels, which shall prevent the entry of the movement of terrorists to and from the country. Some provisions of the plan of action are protected by the "*Law on State and Official Classified Information.*"

The Ministry of National Security uses the information received from its foreign counterparts or Armenian state agencies, to prevent the persons connected to terrorist activities from entering Armenia. Such operations are, if necessary, conducted in collaboration with other agencies.

Sub-paragraph 2(c)

- **Please provide more detailed information on the particular legal provisions and procedures to deny safe haven to terrorists, including provisions and procedures for excluding and expelling terrorists.**

The **"Law on Foreign Nationals in Armenia"** sets procedures under which persons who threaten the security of Armenia can be expelled or denied residence permit. The entry to and exit from Armenia are subject to border control, which verifies the entry or exit documents.

Sub-paragraph 2 (d)

- **What is the competence of the courts of Armenia to deal with criminal acts of each of the following kinds:**
  - **an act committed outside Armenia by a person who is citizen of, or habitually resident in Armenia (whether that person is currently present in Armenia or not);**
  - **an act committed outside Armenia by a foreign national who is currently in Armenia?**

Article 15 of the *Criminal Code* stipulates that citizens of Armenia and stateless persons currently present in Armenia, who have committed criminal acts outside Armenia are subject to criminal responsibility under the provisions of the *Criminal Code* of Armenia, if they are prosecuted in Armenia. This implies that such persons, if

extradited to Armenia or if entered Armenia after having committed the criminal act, shall be tried under the *Code of Criminal Procedure* of Armenia.

A foreign national can be tried in Armenia only in the cases provided for by the international agreements to which Armenia is a party.
The *Criminal Code* provides, that the Armenian nationals, who have committed criminal acts abroad, as well as stateless persons residing in Armenia are subject to criminal charges before the Armenian courts, if extradited by the country where the crime has been committed or if the person has entered Armenia in some other way.

A foreign national can be charged in Armenia for crimes committed abroad, in the directly cases provided through international or bilateral agreements.

Sub-paragraph 2 (e)

- Please outline Articles 61, 62 and 63 of the Criminal Code, relating to terrorism.

Article 61 (Terrorist Act) of the *Criminal Code* stipulates that attempt of or murder of a state or public official, aimed at corrupting or weakening the state and committed in connection with the his/her official duties is punishable by imprisonment for 10-15 years with the confiscation of property or exile for 2-5 years, or without an exile, or death penalty (see reply to sub-paragraph 2 (a)). Serious injury of a state or public official in connection to his/her public activities is punishable by imprisonment for 8-15 years, with the confiscation of property and with or without exile for 2-5 years.

Article 62 of the *Criminal Code (Terrorist Act Directed against a Representative of a Foreign State)* establishes liability for the murder of a representative of a foreign state, if such acts are committed with an aim to provoke armed hostility or international tension. Such an act is punishable by imprisonment for 10-15 years with the confiscation of property and exile for 5 years. An injury on a representative of a foreign state is punishable by imprisonment for 8-15 years with or without an exile for 2-5 years.

Article 63 (Sabotage) Establishes punishment with imprisonment for 8-15 years with the confiscation of property and an exile for 2-5 years, or without an exile, or a death penalty (see reply to sub-paragraph 2 (a)) for causing an explosion or a commission of arson, if such acts are aimed at the corruption of state, mass murder or damage to health, destruction of state or public property, infrastructure, communication, or mass human or animal poisoning.

Sub-paragraph 2(f)

- **What procedures and mechanisms are in place to provide assistance in judicial investigation and proceedings with countries, other than the CIS countries?**
- **What is the legal timeframe within which a request for judicial assistance in criminal investigation or criminal proceedings (especially those relating to the financing or other support of terrorist acts) is required to be met and how long, on average, does it take in practice to implement such a request in Armenia?**

Armenia has entered into bilateral agreements on assistance in legal matters with Greece, Romania, and Bulgaria, and is a party to the European Conventions *'On legal assistance in criminal matters,' 'On transfer of the sentenced persons'* and *'On extradition.'*

The international instruments above stipulate that the request on criminal matters, such as taking into custody, arrest, extradition or other relevant judiciary actions, including the conviction of a person who is currently on the territory of Armenia, should be done in compliance with the provisions of the *Code of Criminal Procedures of Armenia*. The Code does not specify a time frame for the action on the request, however, the international treaties set a one-month deadline for such action, and the Armenian authorities are under the obligation to comply with the international treaties (*Article 6* of the *Constitution*).

Sub-paragraph 3 (c)

- Please provide a list, if any, of the countries with which Armenia has concluded bilateral treaties on cooperation in administrative and judicial matters relating to terrorism.

Armenia has not entered in specific bilateral treaties or agreements on counter-terrorism. However, treaties on cooperation on criminal maters include also matters relating to terrorism and organized crime.

Sub-paragraph 3 (d)

- The CTC would welcome a report, in relating to the relevant international conventions and protocols relating to terrorism, on the progress made by Armenia in:
— becoming a party to instruments to which it is not yet a party; and
— enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.

The legislative reform underway in Armenia is aimed at, inter alia, integration of the international norms and provisions into the national legislation. This, in particular, means that the new draft Criminal Code shall include articles on terrorism (these shall essentially differ from the provisions regarding the terrorist act in the current Code).

Sub-paragraph 3 (f)

- What procedures and mechanisms exist to ensure that asylum seekers have not been involved in terrorist activity before granting refugee status?

Article 6 of the *Law on Refugees* stipulates that the refugee status shall not be granted to persons who have committed criminal offence, war crime, or crime against humanity, or any non-political offence before entering the territory of Armenia, or are under a court verdict for crimes, which violate the principles of the United Nations.
An applicant shall submit relevant evidence that he/she is eligible for refugee status, which is granted only to the persons who do not constitute threat to the national security of Armenia and whose application is legal.

Same restrictions apply to the applications for political asylum (*Article 6* of the *Law on Political Asylum*).

Sub-paragraph 3 (g)

- **What is the basis for extradition in Armenia? Is it governed by legislation, treaties or both? Please outline the relevant legal provision.**
- **Please provide a list of the countries with which Armenia has concluded bilateral treaties on extradition, other than with the CIS countries.**
- **Are claims of political motivation grounds for refusing extradition of alleged terrorists?**

According to *Article 474* and other relevant provisions of the *Code of Criminal Procedures*, a person can be extradited from Armenia on the basis of a bilateral agreement with the requesting party. The terms of extradition – grounds, bases for refusal, delay of extradition, temporary extradition – are regulated through *Articles 480-494*. Most of the Articles are based on the norms set forth in the international treaties and agreements related to extradition. If the provisions of the international instrument contradict to those of the Armenian legislation, the former should prevail (*Article 6* of the *Constitution*, *Article 5* of the *Law on International Agreements*).

Bilateral treaties with Greece, Romania, and Bulgaria regulate, among other points of legal assistance in criminal matters, the issues relating to extradition.

Article 481 of the *Code of Criminal Procedures* stipulates that the political persecution is a relevant ground for the refusal of extradition, which means that an extradition of a person persecuted on criminal charges cannot be refused for political motivations. However, under the criminal doctrine of Armenia a terrorist may not be considered as a victim of political persecution or be protected on political motivations.